Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Flexibility for Delivery of	)	IB Docket No. 01-185
Communications by	)	
Mobile-Satellite Service Providers	)	
In the 2 GHz Band, the L-Band, and	)	
The 1.6/2.4 GHz Band	)	
	)	
Amendment of Section 2 of the	)	ET Docket No. 95-18
Commission's Rules to Allocate	)	
Spectrum at 2 GHz for Use by	)	
The Mobile-Satellite Service	)	
	)	

REPLY COMMENTS OF
GLOBALSTAR, L.P. and L/Q LICENSEE, INC.

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Date: November 13, 2001

EXECUTIVE SUMMARY

The record in this proceeding demonstrates that the important public interest benefits of Mobile-Satellite Services ("MSS") can be expanded and improved through the availability of ancillary terrestrial services ("ATC"). ATC will benefit MSS operators by increasing opportunities to provide service in urban areas, expanding subscriber bases, and improving the financial strength of MSS systems. Ancillary terrestrial service will also improve the accessibility of coast-to-coast services for public safety and emergency response services in situations where local terrestrial service is disrupted.

Only minimal regulation of ATC is necessary to achieve the benefits of ATC and to avoid harmful interference to MSS licensees and other services. ATC should be offered on a non-interference basis with respect to satellite-delivered services in MSS spectrum. But the Commission should give licensees wide latitude in developing the terrestrial infrastructure. MSS licensees should be allowed to determine the extent to which it is financially feasible and/or desirable to construct a terrestrial infrastructure and to pursue implementation in the most efficient and effective manner.

The Commission should not adopt complicated formulas to determine whether ATC services are truly "ancillary," or to require a certain priority for satellite calls, or to impose geographic constraints on terrestrial service, as some terrestrial interests propose. Existing obligations on MSS licensees impose sufficient impetus to maintain the satellite system and to keep terrestrial services

truly ancillary. Moreover, no restrictions are needed to protect CMRS licensees from competition as a result of ATC. The limitations on terrestrial service in MSS spectrum make it highly unlikely that MSS licensees would be able to overcome the dominance held by existing cellular/PCS licensees in the terrestrial mobile phone market.

The record also makes clear that it is not feasible for the Commission to attempt to license carriers for terrestrial service in MSS bands other than the existing MSS licensees. Careful control and intrasystem coordination are essential to avoid a negative impact on MSS system operation and capacity from ATC users. Therefore, to coordinate terrestrial and satellite spectrum usage successfully, the spectrum resources need to be under the control of a single licensee.

The terrestrial carriers' argument that licenses for ATC should be subject to auction mischaracterizes ATC from both a service and technical perspective. The purpose of ATC is to offer integrated satellite-terrestrial service in the same spectrum—one handset, one telephone number, one transparent service for subscribers. Technically, there would be no identifiable ATC segment to be subject to auction. ATC does not change the primary use of the MSS spectrum, even though at any given time, separate channels may be used for satellite and terrestrial transmissions. Therefore, if the Commission authorizes ATC, there would be no "initial" licenses to grant pursuant to the auction statute.

The terrestrial carriers' claim that the ORBIT Act does not apply to spectrum licensed for ATC is also incorrect. Like other services which have been granted

authority for flexible spectrum uses, a grant of flexibility for MSS systems is not an assignment of spectrum triggering a new round of licensing. MSS licensees use their assigned spectrum for international or global MSS, whether or not they provide ATC, as required for the ORBIT Act exemption. As long as MSS licensees are using the spectrum over an integrated MSS-ATC network, the "use" should be deemed for international or global services and not subject to auction.

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REPLY COMMENTS OF
GLOBALSTAR, L.P. and L/Q LICENSEE, INC.

Pursuant to Section 1.415 of the Commission's Rules, Globalstar, L.P. ("GLP") and L/Q Licensee, Inc. ("LQL"), submit this reply to initial comments filed in the above-referenced dockets.[1]

As explained in their initial comments, GLP and LQL have interests in the 2 GHz and 1.6/2.4 GHz Mobile-Satellite Services ("MSS") and support allowing licensees in these services to obtain authorization for an ancillary terrestrial component ("ATC"). Other MSS licensees in the 2 GHz and 1.6/2.4 GHz MSS

[1] Notice of Proposed Rulemaking, FCC 01-225 (released August 17, 2001) ("NPRM").

services also support ATC, and are willing to accept regulatory restrictions to maintain the "ancillary" nature of terrestrial use. The opponents of ATC have not demonstrated any reason to deny MSS licensees "flexibility" in spectrum usage similar to the flexibility which the Commission has granted to licensees in many terrestrial services. Accordingly, based on the record in this proceeding, the Commission must permit ATC consistent with the proposals in the NPRM and the comments of GLP and LQL.[2]

I. THE RECORD SUPPORTS GRANTING ATC AUTHORITY TO MSS LICENSEES IN ALL MSS BANDS.

MSS licensees and their supporters from the 2 GHz and 1.6/2.4 GHz MSS bands have recommended adoption of the Commission's proposal to authorize ancillary terrestrial services in MSS spectrum to expand the benefits available from MSS.[3] The opponents of ATC are generally concerned about in-band or adjacent-

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[2] Cingular Wireless and Verizon Wireless raise issues outside the scope of this proceeding. They argue that the Commission cannot decide issues related to ATC until it has acted on (1) CTIA's pending petition for reconsideration of the Commission's denial of its petition for rulemaking to reallocate the 2 GHz MSS spectrum and (2) their own applications for review of the 2 GHz MSS licensing orders. Comments of Cingular-Verizon Wireless, at 16-23. These requests are under consideration in separate proceedings and have no relevance in this rulemaking. This rulemaking concerns the MSS industry generally, while the requests filed by Cingular Wireless, Verizon Wireless and CTIA refer specifically to the 2 GHz MSS spectrum. In any event, Globalstar filed its Opposition to the Application for Review of its 2 GHz MSS license on August 31, 2001. Oppositions to the CTIA's petition for reconsideration are due November 19, 2001. See 66 Fed. Reg. 55666 (Nov. 2, 2001).

[3] See Comments of Celsat, at 7-14; Comments of Constellation Comm., at 2-14; Comments of Loral Space & Comm., at 5-8; Comments of MCHI, at 2; Comments of

(Footnote continued…)

band interference or competition from MSS systems for terrestrial subscribers.[4] The rules under which ATC would be authorized should allay these concerns. Accordingly, the Commission should proceed to adopt rules that will allow MSS licensees to obtain ATC authority.

A. ATC Would Expand the Benefits of MSS.

The comments filed by U.S. MSS industry reiterate the substantial public interest benefits to U.S. consumers from existing MSS systems and explain how the benefits of MSS can be expanded and improved through the availability of ATC.[5]

(…continued)
New ICO Global, at 15-25; Comments of TMI Comm., at 1-2; Comments of Unofficial Bondholders Committee, at 17-22.

[4] Some parties in this proceeding urge the Commission to reallocate MSS spectrum based on the alleged market failure of the MSS industry. See Comments of AT&T Wireless, at 8-11; Comments of CTIA, at 6. GLP and the MSS industry generally have responded to these arguments in comments and reply comments filed in the proceeding headed by ET Docket No. 00-258. Those comments were also filed in ET Docket No. 95-18, which is part of this proceeding. Therefore, GLP and LQL cross-reference herein the comments filed by GLP on the Commission's proposal to reallocate 2 GHz MSS spectrum.

[5] AT&T Wireless claimed incorrectly that GLP does not support ATC by taking some quotes of its Chairman Olof Lundberg out of the context of the interview in which they were given. See Comments of AT&T Wireless, at 7-8. Mr. Lundberg has been associated with the MSS industry since its inception and remains a strong believer in the MSS business. The quotes cited by AT&T Wireless referred to some exaggerated claims that were made by proponents of MSS systems in the 1990s, rather than to ATC. The point of these comments is that MSS is not a direct competitor to the terrestrial cellular industry or to terrestrial fixed operators. As the record in this docket makes clear, MSS can extend and complement terrestrial mobile phone services and can serve a number of specialized markets such as rural areas, the global transport industry and public safety organizations. ATC would
(Footnote continued…)

The record also demonstrates that ATC will benefit MSS operators by increasing opportunities to provide service in urban areas, expanding subscriber bases, and improving the financial strength of MSS systems.[6] In short, authorizing ATC offers the opportunity for MSS systems to enhance service to U.S. consumers and furthers the Commission's goal of bolstering the MSS industry generally.

The Commission itself has repeatedly recognized many of the public interest benefits of MSS that are rehearsed in the comments, including, for example, serving areas where terrestrial telecommunications services are limited or nonexistent.[7] While this is an important role for MSS in establishing a truly nationwide telecommunications network, the value of MSS as a coast-to-coast service for other purposes should not be overlooked. In particular, one type of service deserves emphasis as the Commission considers ATC.

Several commenters noted that MSS systems were used for rescue and relief efforts following the September 11, 2001 terrorist attacks, simply because they were

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(…continued)
enhance and improve MSS for these customer groups, and Mr. Lundberg and GLP support ATC for that purpose.

[6] See Comments of Constellation Comm., at 7-8; Comments of Loral Space & Comm., at 2-5; Comments of MCHI, at 5-8; Comments of Motient Services et al., at 5-16; Comments of New ICO Global, at 5-15.

[7] See Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band, 15 FCC Rcd 16127, ¶ 1 (2000) ("2 GHz MSS Rules Order"); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5940, ¶ 3 (1994).

the most reliable, and at times only, links to the public telecommunications network in parts of New York City and Northern Virginia.[8] MSS systems generally can provide critical public safety and emergency response services when local terrestrial service is nonexistent or disrupted, in rural, urban, and maritime locations.[9]

Several features of MSS systems offer advantages for public safety and emergency response organizations.[10] First, all Commission-licensed MSS systems provide coverage to the entire United States. Therefore, MSS systems make communications available in emergency situations where terrestrial phone service is not available, either because there is no phone service at the site of the emergency or because the impact of the emergency disrupted existing terrestrial phone service. With an MSS phone, calls can be made from the scene of an emergency to ensure delivery of needed equipment and staff.

Second, MSS phones provide a mobile phone number that allows public safety offices to reach personnel in the field. Even if terrestrial services are operational, office personnel do not necessarily know the location or numbers of

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[8] See Comments of Motient Services et al., at 10; Comments of New ICO Global, at 13-14; Comments of Unofficial Bondholders Committee, at 10-11.

[9] Cellular signals reach only a few miles from the coastline. Globalstar's coverage extends 200 miles and more around the entire coastline of North America except for northernmost and westernmost Alaska and Canada, thus complementing the maritime distress network.

[10] See Comments of Unofficial Bondholders Committee, at 9-12.

phones near the on-site personnel, nor whether the site will be within reach of cellular telephone or dispatch systems.

Third, MSS systems offer universality for public safety organizations that may not use a single common terrestrial communication or dispatch system, which is, unfortunately, typical. When multiple public safety organizations are responding to the same or related sites, MSS phones can overcome any differences in the various units' communications systems.

Because ATC is designed to give better connections in urban areas and inside buildings, ATC can improve the services available to public safety organizations. Emergencies can occur anywhere, inside buildings, on city streets, and in wilderness areas. With ATC, it may be easier to reach emergency personnel in the field, no matter what the location. Increasing the usability of MSS phones in more locations through ATC makes MSS a better service for public safety and emergency response organizations. The existing and recently heightened demands on public safety and emergency personnel support expansion of the capabilities of MSS systems through ATC.

B. The Record Supports Minimizing ATC Regulations.

GLP and LQL agree with the comments from the MSS industry that only minimal regulation is necessary to avoid harmful interference to other licensees. For example, Constellation Communications, a 1.6/2.4 GHz licensee, independently agreed with GLP and LQL that CDMA licensees in the 1.6/2.4 GHz MSS can coordinate terrestrial facilities on their own so as to prevent harmful interference to

each other.[11] Constellation also agreed that 2 GHz MSS licensees should be permitted to coordinate ATC within the 2 GHz MSS bands.[12] Given that MSS licensees will have to develop the technology for an ATC infrastructure,[13] the Commission can regulate best by regulating least, and allowing the affected licensees to establish the operating parameters for ATC within each MSS frequency band.

For the same reason, GLP and LQL disagree with the assertion by New ICO Global that coordination of ATC with adjacent channel 2 GHz MSS systems will not be necessary and its recommendation that ATC be authorized on a "co-primary" basis.[14] The potential for interference from in-band MSS systems deploying ATC will depend upon the spectrum resources in use and the nature of the ATC infrastructure. While terrestrial base stations installed within a "Selected Assignment" may not need coordination, efficient use of the spectrum resources for ATC may require some coordination among MSS licensees. Moreover, in order to ensure that terrestrial uses are truly ancillary to MSS, the Commission should

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[11] Comments of Constellation Comm., at 15-16.

[12] See id., at 31-34; see also Comments of MCHI, at 11 (Commission should allow MSS operators to aggregate spectrum for ATC and MSS use).

[13] The 2 GHz MSS bands are adjacent to bands allocated globally for third-generation services. Therefore, it is likely that the satellite Radio Transmission Technology ("RTT") and ATC RTT can be compatible with 3G RTTs.

[14] See Comments of New ICO Global, at 48-49.

specify that terrestrial uses must be offered on a non-interference basis with respect to satellite uses in MSS bands. New ICO's proposal to designate ATC as "co-primary" could be confusing, and should be clarified as to the status of satellite and terrestrial uses by MSS licensees.

However, there is no need for the Commission to adopt complicated formulas to determine whether ATC services are truly "ancillary,"[15] or to require a certain priority for satellite calls,[16] or to impose geographic constraints on terrestrial service,[17] as some terrestrial interests propose. As long as the Commission maintains the geographic coverage requirements for satellite-delivered services and implementation milestones tied to launch and operation of the entire, authorized satellite system, each MSS licensees will have to construct, launch and operate a satellite system capable of covering the United States and its territories to provide any service, satellite or terrestrial.[18] The extent to which it is financially feasible and/or desirable to construct a terrestrial infrastructure, and the extent of such construction, should be the decision of MSS licensees. It is likely that various MSS licensees will make differing decisions about the scope and locale of terrestrial

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[15] See Comments of American Petroleum Inst., at 5; Comments of AT&T Wireless, at 6.

[16] See Comments of CTIA, at 6; Comments of American Petroleum Inst., at 5.

[17] See Comments of CTIA, at 6-7.

[18] See Comments of Constellation Comm., at 7 ("The high capital investment in satellite facilities requires that they carry as much traffic as possible in order to generate the revenue needed to recover their costs").

service. But, those are the types of business and system design decisions which the Commission has stated it will leave to licensees.[19] Given that ATC will be an untested, new service, the Commission should allow MSS licensees wide latitude to implement it in the most efficient and effective manner.[20]

To the extent that the protectionist restrictions proposed by the terrestrial wireless industry would limit the perceived competitive impact of ATC, it is highly improbable that any MSS licensee will be able to offer terrestrial service on a par with cellular/PCS licensees. Individual MSS systems generally have access to less usable bandwidth than cellular/PCS licensees,[21] and, clearly, cellular/PCS has an enormous headstart over any terrestrial service offered in MSS spectrum. ATC will be implemented, at the earliest, several years hence, and, in the meantime, cellular/PCS licensees will continue to solidify their dominance in the wireless phone business. Accordingly, it would be arbitrary and capricious, to say the least,

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[19] See, e.g., 2 GHz MSS Rules Order, 15 FCC Rcd at 16142, ¶ 26; Comments of MCHI, at 10 ("The FCC should allow licensees to make sound business decisions regarding the deployment of their licensed spectrum so long as additional interference does not result and competition is maintained"); Comments of Unofficial Bondholders Committee, at 31-32 (the Commission should grant MSS licensees regulatory flexibility "so as not effectively to repress innovation by the licensees").

[20] See Comments of Constellation Comm., at 34-37 (advocating that the Commission adopt "only the minimum necessary technical standards to prevent harmful interference to other licensees" from ATC).

[21] See id. at 17-18. This will be particularly true after January 1, 2003. See FCC News, "FCC Announces Wireless Spectrum Cap to Sunset Effective January 1, 2003" (released Nov. 8, 2001).

for the Commission to impose regulations on ATC designed to protect the terrestrial wireless industry from competition.[22]

C. A System Offering Satellite and Terrestrial Services within the Same MSS Band Must Be Under the Control of a Single Licensee.

The comments also made clear that it is not feasible for the Commission to attempt to license carriers for terrestrial service in MSS bands other than the existing MSS licensees. As GLP and LQL explained in their initial comments, it is necessary for a single operator to coordinate co-frequency satellite and terrestrial service.[23] Many in the MSS industry echoed this opinion.[24]

> Coordination and mitigation techniques that permit sharing are easy to implement in the fixed service environment because the location of both the satellite and the terrestrial terminals are known and unchanging. Given the constantly changing location of the terrestrial user in a mobile environment, however, only the satellite licensee can accomplish terrestrial reuse of the spectrum.

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[22] With the Commission's recent decision to lift the spectrum cap, the dominance of a few large CMRS companies will inevitably increase. See Paul Kirby, "FCC Raises Spectrum Cap in Urban Areas, Votes to Eliminate Restriction in January 2003," Telecommunication Reports, Nov. 12, 2001, at 3 (discussing potential for consolidation in mobile telephone industry after repeal of spectrum cap).

[23] Comments of GLP and LQL, at 13-14.

[24] See Comments of Celsat, at 8; Comments of Constellation Comm., at 16-21; Comments of New ICO Global, at 23-25; Comments of TMI Comm., at 3; Comments of Unofficial Bondholders Committee, at 33-34.

> Otherwise, uncoordinated ground usage would jam the satellite system and render it useless.[25]

Sharing between terrestrial and satellite transmissions is particularly complicated on the uplink from the user terminals to space stations or terrestrial base stations. User terminals have omni-directional antennas, that radiate everywhere—to the space stations and the terrestrial base stations. If ATC and MSS are using the same frequencies, ATC transmissions also reach the satellites in view. These transmissions will use satellite resources (power and bandwidth) without regard to the licensee of the spectrum. Careful control and intrasystem coordination are essential to avoid a negative impact on system operation and capacity from non-coordinated ATC users.[26] Therefore, to coordinate terrestrial and satellite spectrum usage successfully, the spectrum resources need to be under the control of a single licensee.

II. THE COMMISSION MAY NOT USE AUCTIONS TO AWARD ATC LICENSES.

The terrestrial CMRS opponents of ATC have attempted to establish that ATC would represent a different use of the spectrum, implicating the statutory

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[25] Comments of Celsat, at 8; see also Comments of Motient Services et al., at 33-36; Comments of New ICO Global, at 31-36.

[26] For this reason, GLP and LQL oppose the suggestion of Iridium Satellite that the Commission should create a separate terrestrial service in the 1.6/2.4 GHz MSS and 2 GHz MSS bands that would be secondary to MSS. Comments of Iridium Satellite, at 5-8. This suggestion is technically infeasible.

requirement for the Commission to award licenses for ATC by auction. As discussed below, these arguments are spurious and must be rejected.

A. The Auction Statute Is Not Implicated by Authorization of Ancillary Terrestrial Service by MSS Licensees.

In an effort to block ATC, several terrestrial carriers contend that MSS terrestrial service would be spectrally and economically separate from MSS satellite service, and, therefore, authority for ATC would represent a license to use a separate and new spectrum allocation.[27] According to this argument, granting licenses to use such a new spectrum allocation would implicate Section 309(j) of the Communications Act, and the Commission would be required to license ATC only by competitive bidding in a proceeding open to all interested parties rather than just MSS licensees.[28]

The impetus for this argument from the terrestrial carriers is clear, and it is also clear why this argument fails. The motivation for the argument is to sever ATC from any connection to flexible use, as authorized by Section 303(y) of the Act, and thus to preserve the terrestrial carriers' ability to obtain "flexibility" in CMRS spectrum. Indeed, some of the same companies that argued against granting flexibility to MSS licensees in this proceeding argued in favor of granting flexibility

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[27] See Comments of AT&T Wireless, at 5; Comments of Cingular-Verizon Wireless, at 9; Comments of CTIA, at 5-6; Comments of Rural Cellular Assoc., at 3-4.

[28] See Comments of AT&T Wireless, at 5-6; Comments of Cingular-Verizon Wireless, at 9-12; Comments of CTIA, at 7-8.

to CMRS carriers just a few years ago.[29] If ATC requires a separate allocation, then the division of spectrum could be viewed as creating a distinct service, like the distinct satellite and terrestrial services to be authorized in the Ku-band.[30] Under the terrestrial carriers' theory, requests for ATC authority might then fall under the Section 309(j) requirement of "mutually exclusive applications . . . for any *initial license*."

The terrestrial carriers' argument mischaracterizes ATC from both a service and technical perspective. The purpose of ATC is to offer integrated satellite-terrestrial service in the same spectrum—one handset, one telephone number, one transparent service for subscribers. Unlike the distinct satellite and terrestrial services in Ku-band, ATC would not represent a fundamentally different use of MSS spectrum, nor would it be offered as a completely separate service. Subscribers would perceive MSS satellite and terrestrial services as a single service with two operational modes.

Technically, there would be no identifiable ATC segment to be subject to auction. On the one hand, not all MSS licensees assigned spectrum in the same

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[29] See Comments of Loral Space & Comm., at 14, citing comments filed by AT&T in Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, 11 FCC Rcd 8965 (1996).

[30] See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, 16 FCC Rcd 4096, 4218, ¶ 326 (2000) (determining to auction fixed terrestrial use in spectrum shared with Fixed-Satellite Service).

MSS band would offer ATC, and so, their assigned spectrum would be dedicated to MSS. The fact that some licensees may use certain channels for ATC does not mean that those specific channels would be dedicated to terrestrial service throughout the licensees' service areas. And, among the licensees that offer ATC, it is likely that each licensee would allot somewhat different spectrum resources to terrestrial service.

A better comparison of the allocation of spectrum resources between satellite and terrestrial services is to the terrestrial carriers' offerings of analog and digital service in the same geographic service area. Cellular systems use separate channels for analog and digital service in the same geographic area. However, no one has deemed analog and digital services as separate services, requiring separate spectrum allocations and separate licensing procedures.

Similarly, the Commission did not issue separate licenses when it authorized ITFS and MMDS licensees to offer two-way fixed services in spectrum that had previously been restricted to one-way video.[31] Frequency separation is necessary to avoid interference from two-way services into downstream-only services on ITFS and MMDS channels, and, therefore, separate channels must generally be assigned to the different services. Yet, the Commission left the decision of how to arrange

[31] See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two Way Transmissions, 13 FCC Rcd 19112 (1998).

frequency usage to the licensees, and required neither grant of new licenses, nor auctions for commercial use of the spectrum.

The Commission's recent interposition of a "mobile" service allocation over the "fixed" service allocation for ITFS and MMDS in the 2500-2690 MHz band confirms that no new service is created by authorization of flexible uses under Section 303(y).[32] Clearly, the mobile and fixed uses will have to be separated within the 2500-2690 MHz band in order to avoid interference. Yet, the Commission did not deem the "mobile" allocation to trigger a new round of licensing; rather, it simply offered MMDS and ITFS licensees "flexibility."[33] Likewise, ATC does not change the primary use of the MSS spectrum, even though at any given time, separate channels may be used for satellite and terrestrial transmissions. Therefore, if the Commission authorizes ATC, there would be no "initial" licenses to grant pursuant to Section 309(j).[34]

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[32] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, FCC 01-256, ¶ 24 (released Sept. 24, 2001) ("First 3G Report and Order").

[33] See Comments of Unofficial Bondholders Committee, at 24-27 (detailing how the Commission has granted flexibility for licensees in the ITFS/MMDS, Satellite DARS, CMRS, Broadcast, and WCS services—none of which required new licenses); Comments of New ICO Global, at 26-29 (detailing services such as DBS, Satellite DARS, CMRS and ITFS/MMDS to which the Commission has granted flexibility in use of allocated spectrum); Comments of Motient Services et al., at 18-21 (same).

[34] See Comments of Constellation Comm., at 21-22; Comments of Loral Space & Comm., at 10-11.

B. The ORBIT Act Applies to Spectrum Used by MSS Licensees, Whether MSS or ATC.

The terrestrial carriers also claim that the ORBIT Act does not apply to spectrum licensed for ATC.[35] They argue that spectrum assigned for ATC would not be "used for the provision of international or satellite communications services" as required for the ORBIT Act to apply.[36] According to the terrestrial carriers, ATC is a "domestic" use, and does not constitute a "satellite" service.

The terrestrial carriers are wrong again. First, a grant of flexibility under Section 303(y) is not an assignment of spectrum triggering a new round of licensing. For example, unlike the distinct services sharing spectrum at Ku-band, ATC will be provided on an integrated basis with MSS, and, therefore, it is impossible to allocate the terrestrial and satellite modes separately. Rather, like the new "mobile" designation in the "fixed" ITFS and MMDS bands, grant of flexibility is an expansion of opportunities for existing licensees.[37] Therefore, no new licenses need to be granted.

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[35] The relevant ORBIT Act language states: "Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services." Open-Market Reorganization for the Betterment of International Telecommunications Act, P.L. 106-180, 114 Stat. 48, § 647 (2000) (codified at 47 U.S.C. § 765f).

[36] See Comments of AT&T Wireless, at 16; Comments of Cingular-Verizon Wireless, at 13; Comments of CTIA, at 9.

[37] See First 3G Report and Order, FCC 01-256, ¶ 25.

Second, all MSS licensees use their assigned spectrum for international or global MSS service, whether or not they provide ATC. Terrestrial and satellite service is expected to be offered on an integrated basis—one handset, one phone number, one bill for services. In these circumstances, the fact that many ATC calls may be "domestic" is just as irrelevant as the fact that many MSS calls are "domestic." The character of the subscriber calls does not change the nature of the infrastructure as a global telecommunications network.

Third, contrary to the claims of terrestrial carriers,[38] the concern underlying the ORBIT Act that auctions for MSS spectrum in the United States would lead to auctions in other countries remains a concern even with ATC. In fact, it could worsen the situation if the United States uses as an excuse for auctions that terrestrial services are being offered in MSS spectrum. Countries that have no ORBIT Act might then bundle satellite-terrestrial authority into an auctioned service. Global auctions could result in the demise of the MSS industry—the opposite goal of ATC.

Finally, if it has any relevance, the National Public Radio v. FCC decision points to not using auctions to award ATC authorizations. In NPR v. FCC, the court concluded that the Commission could not use auctions to license noncommercial, educational ("NCE") broadcast stations on spectrum designated for commercial use, even if the NCE station applicants were competing against

[38] See Comments of AT&T Wireless, at 16-17; Comments of Cingular-Verizon Wireless, at 13-14; Comments of Telephone & Data Systems, at 8-10.

commercial applicants for the same channels based on the statute exempting "noncommercial educational broadcast stations" from licensing by auction.[39]

The ORBIT Act bars auctions for spectrum "used for the provision of international and global satellite communications services." The terrestrial carriers argue that, since the statutory exemption for NCE broadcasters specifies *the classification of the licensees*,[40] rather than *uses*, the decision in NPR v. FCC does not protect MSS licensees from auctions.[41]

This parsing of the relevant statutes ultimately fails. NCE broadcast stations use spectrum for noncommercial purposes. Thus, when an applicant proposes an NCE "use" of spectrum designated for commercial use, it is just as much the use of the spectrum as the identity of the applicant that exempts the applicant from an auction. Similarly, if an MSS licensee offers terrestrial service, it would be integrated with the satellite service so as to offer users telecommunications services that are essentially indistinguishable in form and purpose. As long as the MSS licensee is using the spectrum over an integrated MSS-ATC network, the "use" should be deemed for international or global services. The fact that the ORBIT Act and the NCE exemption refer variously to uses and

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[39] National Public Radio v. FCC, 254 F.3d 26 (D.C. Cir. 2001).

[40] 47 U.S.C. § 309(j)(2).

[41] Comments of Cingular-Verizon Wireless , at 14-15; Comments of CTIA, at 9-10.

station licensees offers no salient difference in these circumstances and does not dictate auctions for the former but not the latter.

III. CONCLUSION

For the reasons set forth above and in their initial comments, GLP and LQL urge the Commission to adopt rules permitting ATC in MSS bands, including the 1.6/2.4 GHz MSS band, with minimal additional regulatory requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 13th day of November, 2001, caused to be served true and correct copies of the foregoing "Reply Comments of Globalstar, L.P. and L/Q Licensee, Inc." upon the following parties via first-class United States mail, postage prepaid:

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